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United States
Department of Defense



Air Force Needs Better Processes to Appropriately
Justify and Manage Cost-Reimbursable Contracts

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Acronyms

AFB	Air Force Base
AFRL	Air Force Research Lab
CLIN	Contract Line Item Number
COR	Contracting Officer's Representative
DCAA	Defense Contract Audit Agency
DFARS	Defense Federal Acquisition Regulation Supplement
FAC	Federal Acquisition Circular
FAR	Federal Acquisition Regulation
SBIR	Small Business Innovation Research



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March 21, 2013

**MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY, AND LOGISTICS
ASSISTANT SECRETARY OF THE AIR FORCE
(FINANCIAL MANAGEMENT AND COMPTROLLER)**

**SUBJECT: Air Force Needs Better Processes to Appropriately Justify and Manage
Cost-Reimbursable Contracts (Report No. DODIG-2013-059)**

We are providing this report for your review. Air Force contracting personnel did not consistently implement the Federal Acquisition Regulation revisions for the use of cost-reimbursable contracts for 75 contracts, valued at approximately \$8.8 billion, of the 156 contracts reviewed, valued at approximately \$10.5 billion. We reviewed contracts at four Air Force sites. We are required to perform this audit in accordance with the FY 2009 National Defense Authorization Act, section 864, "Regulation on the Use of Cost Reimbursement Contracts." This is the first in a planned series of audit reports.

We considered management comments on a draft of this report when preparing the final report. Comments from the Deputy Assistant Secretary of the Air Force (Contracting), the Director, Defense Procurement and Acquisition Policy, and the Director of Contracts, Warner Robins Air Force Sustainment Center conformed to the requirements of DoD Directive 7650.3; therefore, additional comments are not required.

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9077 (DSN 664-9077).

Jacqueline L. Wicecarver
Jacqueline L. Wicecarver
Assistant Inspector General
Acquisition and Contract Management



Results in Brief: Air Force Needs Better Processes to Appropriately Justify and Manage Cost-Reimbursable Contracts

What We Did

We are required to perform this audit in accordance with the FY 2009 National Defense Authorization Act, section 864, "Regulation on the Use of Cost Reimbursement Contracts."

Our objectives were to determine whether Air Force complied with interim Federal Acquisition Regulation (FAR) revisions on the use of cost-reimbursable contracts by documenting: that approval for the cost-reimbursable contract was at least one level above the contracting officer; that cost-reimbursable contracts were justified; how the requirements under contract could transition to firm-fixed-price in the future; that Government resources were available to monitor the cost-reimbursable contract; and that contractors had an adequate accounting system in place during the entire contract. This is the first in a planned series of audit reports on DoD compliance with the interim rule for the use of cost-reimbursable contracts.

What We Found

Of the 156 contracts reviewed, valued at about \$10.5 billion, Air Force contracting personnel did not consistently implement the interim rule for 75 contracts, valued at about \$8.8 billion. Air Force contracting personnel issued contracts that did not follow the interim rule because they were unaware of the rule, assumed it did not apply to task or delivery orders when the basic contract was issued before the rule, or did not document actions taken to conform to the rule. As a result, Air Force contracting personnel may increase the Air Force's risk because cost-reimbursable contracts provide less incentive for contractors to control costs. We identified internal control weaknesses for implementing the interim rule changes regarding the use of cost-reimbursable contracts.

What We Recommend

We recommend that the Deputy Assistant Secretary of the Air Force (Contracting) emphasize the FAR revisions to contracting personnel; consider issuing more hybrid contracts; establish better communication channels to identify areas to transition to firm-fixed-price contracts; and require contracting officers to document instances where they maintained oversight functions. We recommend that the Director, Defense Procurement and Acquisition Policy, initiate a process to reduce the potential contradiction between Defense Federal Acquisition Regulation Supplement 242.75 and FAR revisions. We recommend that Director of Contracting, Warner Robins Air Force Sustainment Center, adjust templates to include approval above the contracting officer.

Management Comments and Our Response

The Deputy Assistant Secretary of the Air Force (Contracting) agreed and will issue clarifying memoranda and adjust templates used in the acquisition planning phase. We consider these comments responsive. The Director, Defense Procurement and Acquisition Policy agreed and will review potential contradictions. We consider these comments responsive. The Director of Contracts, Warner Robins Air Force Sustainment Center agreed and stated that they will require a Streamlined Acquisition Strategy Summary or a Determination and Findings for cost-reimbursable contracts, both of which document approval one level above the contracting officer. We consider these comments responsive. Please see the recommendations table on the back of this page.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Deputy Assistant Secretary of the Air Force (Contracting)		1.a, 1.b, 1.c, and 1.d
Director of Defense Procurement and Acquisition Policy		3
Director of Contracting, Warner Robins Air Force Sustainment Center		2

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Introduction

Objectives

Our objectives were to determine whether Air Force contracting personnel complied with interim Federal Acquisition Regulation (FAR) revisions regarding the use of cost-reimbursable¹ contracts. Specifically, we determined whether Air Force contracting personnel implemented the interim rule by documenting:

- that approval for the cost-reimbursable contract was at least one level above the contracting officer;
- that the use of cost-reimbursable contracts was justified;
- how the requirements under the contract could transition to firm-fixed-price in the future;
- that Government resources were available to monitor the cost-reimbursable contract; and
- that contractors had an adequate accounting system in place during the entire contract.

We also determined whether Air Force personnel were intentionally misclassifying contracts as firm-fixed-price to avoid the increased cost-reimbursable contract documentation requirements.

We plan to issue separate reports for each Service, one report to include the Missile Defense Agency and the Defense Microelectronics Activity, as well as a summary report. This is the first report in the planned series of reports and includes cost-reimbursable contracts issued by the Department of the Air Force at the four sites visited. See Appendix A for the scope and methodology and prior coverage related to the objectives.

Background

Section 864 of the FY 2009 National Defense Authorization Act requires FAR revisions regarding the documentation of decisions and approvals necessary before issuance of other than firm-fixed-price contracts and that the DoD Inspector General audit DoD's compliance with the changes within 1 year of policy issuance. Federal Acquisition Circular (FAC) 2005-50 issued March 16, 2011, implemented the required revisions on an interim basis. This interim rule was effective immediately and was not subject to public comment before issuance. FAC 2005-50 amended FAR Part 7, "Acquisition Planning," FAR Part 16, "Types of Contracts," and FAR Part 42, "Contract Administration and Audit Services." The final rule was published in the Federal Register on March 2, 2012, without significant changes that would affect our audit objectives. To promote savings in Federal contracting, contracting personnel should choose the

¹ We use "cost-reimbursable" to describe any type of contract other than firm-fixed-price contracts throughout the report, such as labor hour and time and materials contracts.

appropriate contract type. See Appendix B for a copy of the interim rule, Federal Acquisition Circular 2005-50 issued March 16, 2011.

Interim Rule Requirements and Our Interpretation

We divided our objective into five areas based on the interim rule. We interpreted parts of the interim rule for each of these areas to determine what we would accept as adequate documentation in the contract file. Contracting personnel were required by the interim rule to include the justification, approval, and transition areas of our objective in the acquisition planning documentation. For each of these areas, we accepted documentation anywhere in the contract file because some of the acquisition plans were completed before the interim rule. Contracting personnel were not required by the interim rule to document that adequate resources and an adequate accounting system were available specifically within the acquisition planning documentation.

Approval

Air Force contracting personnel were required by the interim rule to obtain approval of a cost-reimbursable contract at least one level above the contracting officer. FAC 2005-50 states, “The contracting officer shall document the rationale for selecting the contract type in the written acquisition plan and ensure that the plan is approved and signed at least one level above the contracting officer.” Air Force contracting personnel were required by the interim rule to document this approval in the acquisition plan. We accepted any documentation in the contracting files that stated the contract type was cost-reimbursable and was reviewed and signed by an Air Force official above the contracting officer as evidence of having met the interim rule requirement.

Justification

Air Force contracting personnel were required by the interim rule to justify the use of a cost-reimbursable contract. FAC 2005-50 states:

[a]cquisition personnel shall document the acquisition plan with findings that detail the particular facts and circumstances, (e.g., complexity of the requirements, uncertain duration of the work, contractor’s technical capability and financial responsibility, or adequacy of the contractor’s accounting system), and associated reasoning essential to support the contract type selection.

Air Force contracting personnel were required by the interim rule to document the justification in the acquisition plan. We determined that Air Force contracting personnel followed the interim rule by completing a Determination and Findings Memorandum on contract type anywhere in the contract file; it included discussion of research and development efforts with results that cannot be precisely described in advance.

Transition

Air Force contracting personnel were required by the interim rule to document the potential of cost-reimbursable contracts to transition to firm-fixed-price contracts.

FAC 2005-50 states:

[f]or each contract (and order) contemplated, discuss the strategy to transition to firm-fixed-price contracts to the maximum extent practicable. During the requirements development stage, consider structuring the contract requirements, e.g., contract line items (CLINS), in a manner that will permit some, if not all, of the requirements to be awarded on a firm-fixed-price basis, either in the current contract, future option years, or follow-on contracts.

We interpreted this section of the interim rule to require an explanation of the potential to transition to a firm-fixed-price contract or a justification as to why the particular effort will never be able to transition to a firm-fixed-price contract. Air Force contracting personnel were required by the interim rule to document this strategy in the acquisition plan. We determined that Air Force contracting personnel were following the interim rule if they issued contracts that had both firm-fixed-price and cost-reimbursable CLINs along with a statement in the contract file that allowed the firm-fixed-price CLINs to be used when appropriate. We also determined that contracts noting that the award will not be able to transition to a firm-fixed-price contract for various reasons met the intent of the interim rule.

Adequate Resources

Air Force contracting personnel were required by the interim rule to document that adequate resources are available to manage a cost-reimbursable contract. FAC 2005-50 states:

[a] cost-reimbursement contract may be used only when adequate Government resources are available to award and manage a contract other than firm-fixed-priced (see 7.104(e)) including— (i) Designation of at least one contracting officer's representative (COR) qualified in accordance with 1.602-2 has been made prior to award of the contract or order.

We interpreted this section of the interim rule to require evidence of an appropriate contracting officer's representative (COR) or similarly qualified individual being assigned to the contract. We obtained the COR nomination letter, signed acceptance by the COR, and COR training documents. Air Force contracting personnel were not required by the interim rule to document this evidence in any specific location of the contract file. Although assigning a COR to the contract identifies an individual to manage a contract, it does not always indicate that adequate Government resources are available to monitor the contract as required by the interim rule. We identified the assignment of a COR on the contracts rather than testing the adequacy of the CORs assigned to the contracts reviewed.

Adequate Accounting System

Air Force contracting personnel were required by the interim rule to determine the adequacy of the contractor's accounting system during the entire period of performance for cost-reimbursable contracts. FAC 2005-50 states, "Determine the adequacy of the contractor's accounting system. The contractor's accounting system should be adequate during the entire period of contract performance." We interpreted this section of the

interim rule to require documentation that the contracting officer concluded the accounting system was adequate. At a minimum, we required a statement in the file that the accounting system was adequate based on information from Defense Contract Audit Agency (DCAA) or Defense Contract Management Agency officials responsible for monitoring the contractor. We also accepted the contracting officer's conclusion or other documents, such as rate verifications and e-mails, from DCAA and Defense Contract Management Agency as adequate documentation. We focused our audit on identifying whether the contracting officer made a determination that the accounting system was adequate at contract award, rather than during the entire period of performance, as required by the interim rule.

Contracts Reviewed

Our Federal Procurement Data System–Next Generation queries identified 3,808 contract actions on 1,378 cost-reimbursable, labor-hour, or time-and-materials contracts issued by the Air Force from March 17, 2011 through February 29, 2012, valued at approximately \$26 billion; however, this includes the value of all potential options and any firm-fixed-price portions of the contracts. We reviewed 156 contracts, with cost-reimbursable portions, valued at approximately \$10.5 billion; 2 of the 156 contracts reviewed accounted for approximately \$7.4 billion of this amount. We selected the four Air Force sites based on a combination of cost-reimbursable award amounts and number of cost-reimbursement contracts issued. The Air Force sites visited were Hanscom Air Force Base (AFB), Massachusetts; Offutt AFB, Nebraska; Air Force Research Laboratory (AFRL), Rome, New York; and Warner Robins AFB, Georgia. Table 1 shows the number of basic contracts and the task or delivery orders reviewed and the contract value at each site.

Table 1. Contracts Reviewed

Site	Basic Contracts	Task/Delivery Order	Total	Contract Value (billions)*
Offutt AFB	0	50	50	\$0.80
AFRL Rome	22	12	34	0.20
Hanscom AFB	10	18	28	8.19
Warner Robins AFB	30	14	44	1.28
Total	62	94	156	\$10.47

*Contract value includes total of all cost-reimbursable elements.

The Small Business Innovation Research Program

The Small Business Innovation Research (SBIR) program is a three-phase program that encourages domestic small businesses to engage in Federal research and development that has the potential for commercialization. The SBIR program was developed to increase small business opportunity in federally funded research and development, stimulate high-tech innovation, and increase private-sector commercialization. The SBIR

program was established under the Small Business Innovation Development Act of 1982; the U.S. Small Business Administration serves as the coordinating agency. Phase I of the program is designed for exploration of the technical merit or feasibility of an idea or technology. A firm-fixed-price contract is almost always used for this phase. Phase II, typically a cost-plus-fixed-fee contract, consists of the research and development work in which the developer also evaluates commercialization potential. During Phase III, the developer moves toward commercialization of the innovation. SBIR program funds cannot be used for Phase III. We did not target or avoid SBIR contracts as part of our nonstatistical sample because the interim rule does not include an exception for SBIR contracts.

The SBIR Desk Reference for Contracting and Payment, states that according to FAR Subpart 16.3, “Cost-Reimbursement Contracts,” a cost-reimbursable contract may be used only when the contractor’s accounting system is adequate for determining costs applicable to the contract and requires Government surveillance during the performance of the contract. Air Force Instruction 12.1, “Small Business Innovation Research Proposal Submission Instructions,” requires all Phase II awardees to have a DCAA approved accounting system. Contracting personnel are encouraged to require an accounting system approval prior to the Phase II award timeframe. Air Force contracting personnel relied on the accounting system pre-approval requirement set by the Air Force Instruction 12.1 when awarding SBIR cost-reimbursable contracts.

Review of Internal Controls

DoD Instruction 5010.40, “Managers’ Internal Control Program (MICP) Procedures,” July 29, 2010, requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. We identified internal control weaknesses for implementing the changes required by the interim rule regarding the use of cost-reimbursable contracts. The four Air Force sites visited did not always update checklists, procedures, or other guidance for issuing and administering cost-reimbursement contracts. Specifically, the Air Force did not always have procedures to document the potential of cost-reimbursement contracts to transition to firm-fixed-price contracts. Additionally, the Air Force did not have procedures to ensure that adequate Government resources were always available to monitor the contract before award or verify the adequacy of the contractor’s accounting system throughout the entire period of contract performance. We will provide a copy of the report to the senior official in charge of internal controls in the Air Force and in the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

Finding. Sites Visited Inconsistently Implemented the Interim Rule

Of the 156 contracts reviewed, valued at approximately \$10.5 billion, Air Force contracting personnel did not consistently implement the interim rule for 75 contracts, valued at approximately \$8.8 billion. Air Force contracting personnel fully met the interim rule on 81 contracts, valued at approximately \$1.7 billion of the 156 contracts reviewed. Contracting personnel stated they issued contracts that did not meet the interim rule because they:

- were unaware of the rule;
- operated under the assumption that the rule did not apply to task or delivery orders issued when the basic contract was issued before the rule; or
- did not document the specific actions taken to conform with the rule.

Specifically, Air Force contracting personnel did not:

- obtain approval for the use of a cost-reimbursable contract for 39 contracts, valued at approximately \$374 million, of the 156 contracts—Air Force contracting personnel stated that the type of contract was already approved because the contract was issued under the SBIR program or a Broad Agency Announcement² that recommended the use of a cost-reimbursable contract;
- justify the use of a cost-reimbursable contract for 25 contracts, valued at approximately \$424 million, of the 156 contracts;
- document the possibility of a transition to a firm-fixed-price contract for 42 contracts, valued at approximately \$8 billion, of the 156 contracts—Air Force contracting personnel stated they did not document how the award could transition because they had no reason to believe the contract would ever transition to a firm-fixed-price contract;
- make adequate Government resources available for 23 contracts, valued at approximately \$7.4 billion, of the 156 contracts—Air Force contracting personnel stated they did not assign a COR because the contract values were minimal and other awards received priority for the limited COR resources; and
- verify the adequacy of the contractor's accounting system for 42 contracts, valued at approximately \$1 billion, of the 156 contracts—Air Force contracting personnel stated they were not able to obtain timely assistance from DCAA or did not question that the accounting system was adequate because the contract was awarded to a well-established contractor.

As a result, Air Force contracting personnel continue to issue cost-reimbursable contracts that may inappropriately increase the Air Force's contracting risks because cost-reimbursable contracts provide less incentive for contractors to control costs.

² Broad Agency Announcements included contracts issued for Defense Advanced Research Projects Agency.

More Consistent Documentation Procedures Needed to Fully Implement FAR Revisions

Air Force contracting personnel fully implemented FAR revisions on 81 contracts, valued at approximately \$1.7 billion, of the 156 contracts reviewed. The cost-reimbursable portions of the 156 contracts were valued at approximately \$10 billion.³ Contracting

Contracting personnel implemented portions of the interim rule for the other 75 contracts...but failed to consistently include documentation in the contract files.

personnel implemented portions of the interim rule for the other 75 contracts, valued at approximately \$8.8 billion, but failed to consistently include documentation in the contract files to meet the interim rule. We make one DoD-wide recommendation in this report and will include other DoD-wide recommendations in the summary report issued at the completion of this series of reports. See Appendix C for tables showing interim

rule compliance by contract. Air Force contracting officials should emphasize the importance of the Federal Acquisition Regulation revisions to contracting personnel for the use of cost-reimbursable contracts.

Personnel Generally Obtained Proper Approval for a Cost-Reimbursable Contract

Air Force contracting personnel obtained proper approval for the use of a cost-reimbursable contract for 117 contracts, valued at approximately \$10 billion, of the 156 contracts reviewed. In the 39 cases of noncompliance, valued at approximately \$374 million, contracting officers stated they were not aware of the new requirements, or believed the type of contract was already approved, because the contract was issued under the SBIR program or a broad agency announcement that suggested the use of a cost-reimbursable type contract.

Air Force contracting personnel described their contracting procedures and explained their interpretation of the interim rule at each site visited. Air Force contracting personnel documented approval in the signed Price Negotiation Memorandum, the Justification and Review Document, the Business Clearance Memorandum, and in the Determination and Finding of Contract Type. Site-specific explanations of contracts which did not satisfy the interim rule included:

- Offutt AFB contracting personnel stated that some task or delivery orders did not have a contract type determination because the basic contracts were issued before the interim rule. Additionally, Offutt AFB contracting officials used a review process where branch chiefs approved another branch of contracting officers use of cost reimbursable contracts. This was compliant with the interim rule except in cases where other branch chiefs were required to be listed as the contracting

³ Contract values used throughout the report refer to cost-reimbursable portions of each contract.

officer because of the high dollar value of the contract. In those instances, branch chiefs approved cost-reimbursable awards of other branch chiefs, which is not one level above the contracting officer as required by the interim rule.

- Hanscom AFB contracting personnel stated that no individual Determination and Finding was necessary because the task or delivery order was based on a contract with only one CLIN for research and development.
- Warner Robins AFB contracting personnel used a Price Negotiation Memorandum that did not include a signature line for approval one level above the contracting officer.

We interpreted the interim rule to apply to task or delivery orders, regardless of the timing of the basic contract award, and to require approval at least one level above the contracting officer, regardless of the CLIN structure. We also did not consider the lack of a signature line to be a valid explanation for not documenting approval one level above the contracting officer.

Warner Robins AFB contracting personnel did not meet the interim rule requirement to document approval of a cost-reimbursable contract one level above the contracting officer for 23 of the 44 contracts reviewed. We recommend that the Director of Contracts, Warner Robins Air Force Sustainment Center, adjust templates to require approval one level above the contracting officer for the use of cost-reimbursable contracts. We made this recommendation specific to Warner Robins AFB because over half of the contracts reviewed did not meet the interim rule. Table 2 shows the total contracts reviewed at each site and the number of those contracts that did not meet this section of the interim rule.

Table 2. Results of Level of Approval One Level Above the Contracting Officer

Site	Total Contracts	Did Not Meet Interim Rule
Offutt AFB	50	13
AFRL Rome	34	0
Hanscom AFB	28	3
Warner Robins AFB	44	23
Total	156	39

Justification Generally Documented for the Use of a Cost-Reimbursable Contract Type

Air Force contracting personnel satisfied the interim rule requirement to justify a cost-reimbursable type contract for 131 contracts, valued at approximately \$10 billion, of the 156 contracts reviewed. However, Air Force contracting personnel did not satisfy the interim rule's requirement to justify a cost-reimbursable type contract for 25 contracts, valued at approximately \$424 million, because contracting personnel stated they were either not aware of the rule, operated under the assumption that the rule did not apply to

task or delivery orders issued on basic contracts dated before the rule, or did not document the actions taken to conform with the rule.

Air Force contracting personnel described their contracting procedures and explained their interpretation of the interim rule at each site visited. Air Force contracting personnel documented proper justification in the Determination and Finding of Contract Type, the market research section of the Justification and Approval for Other than Full and Open Competition, the Acquisition Plan, and the Price Negotiation Memorandum. Site-specific explanations of contracts which did not satisfy the interim rule included:

- Offutt AFB contracting personnel stated that some task or delivery orders did not have a contract type determination because the basic contracts were issued before the interim rule.
- AFRL Rome contracting personnel stated that they issued SBIR contracts which required prior acquisition planning and justification to issue a cost-reimbursable contract.
- Hanscom AFB contracting personnel stated that a separate justification should not have been required on task or delivery orders resulting from a basic contract which only had one CLIN for research and development studies.

We interpreted the interim rule to apply to task or delivery orders regardless of the timing of the basic contract award. We accepted documentation of prior acquisition planning and justification to issue a cost-reimbursable contract for SBIR contracts. We also interpreted the interim rule to require justification of contract type regardless of the CLIN structure.

Table 3 shows the total contracts reviewed at each site and the number of those contracts that did not meet this section of the interim rule. Contracting personnel at Offutt AFB did not meet the interim rule requirement to justify the use of a cost-reimbursable contract type for 17 of the 50 contracts reviewed. Air Force officials should emphasize the importance of the Federal Acquisition Regulation revisions to contracting personnel for the use of cost-reimbursable contracts.

Table 3. Justified the Use of a Cost-Reimbursable Contract Type

Site	Total Contracts	Did Not Meet Interim Rule
Offutt AFB	50	17
AFRL Rome	34	0
Hanscom AFB	28	1
Warner Robins AFB	44	7
Total	156	25

Inadequate Documentation to Support Efforts to Transition Subsequent Requirements to Firm-Fixed-Price Contracts

Air Force contracting personnel did not document the possibility of a transition to a firm-fixed-price contract for 42 contracts, valued at approximately \$7.9 billion,⁴ of the 156 contracts reviewed. In cases of noncompliance, Air Force contracting personnel stated they were not aware of the requirement or did not document how the award could transition because they had no reason to believe the contract would ever transition to a firm-fixed-price contract in the future.

Contracting personnel did not document the possibility of a transition to a firm-fixed-price contract for 42 contracts.

Air Force contracting personnel described their contracting procedures and explained their interpretation of the interim rule at each site visited. Air Force contracting personnel documented the possibility of transition to firm-fixed-price in the Acquisition Plan, the Justification and Approval for Other than Full and Open Competition, the Determination and Finding of Contract Type, and the Price Negotiation Memorandum. We determined that Air Force contracting personnel were following the interim rule if they issued hybrid contracts⁵ with a statement in the contract file that allowed the firm-fixed-price CLINs to be used when appropriate. For example, Hanscom AFB contracting personnel satisfied the interim rule by stating, “There is insufficient information to estimate the cost with sufficient certainty to use any type of firm-fixed-price contract line item.” We also determined that contracts noting that the award will not be able to transition to a firm-fixed-price contract met the intent of the interim rule. For example, AFRL Rome contracting personnel satisfied the interim rule by stating, “Circumstances do not allow the agency to define its requirements sufficiently to allow for a fixed-price type contract.” Site-specific explanations of contracts which did not satisfy the interim rule included:

- Offutt AFB contracting personnel stated that many of the delivery or task orders reviewed were issued from basic contracts dated before the interim rule.
- AFRL Rome contracting personnel stated that the majority of their contracts are inherently cost type because they are for research and development and have too much uncertainty to be awarded as firm-fixed-price. AFRL Rome contracting personnel also stated that they will consider revising their templates to include this rationale to correct the issue.
- Hanscom AFB contracting personnel stated that no individual Determination and Finding was necessary because the task or delivery order was based on a contract with only one CLIN for research and development.

⁴ The contracts, valued at approximately \$7.9 billion, include 2 contracts valued at about \$7.4 billion.

⁵ According to the Office of Federal Procurement Policy, a hybrid contract allows contracting officers to choose between fixed-price, cost-reimbursement, or time and materials line items to match each requirement with the appropriate pricing method.

- Warner Robins AFB contracting personnel stated that they were unaware of the requirement to document the potential of a cost-reimbursable contract to transition to firm-fixed-price.

Air Force contracting officials should promote the issuance of more hybrid contracts that contain multiple line items for the same service or item with different price structure so that contract type can be selected on each task or delivery order. Air Force personnel should also establish better communication channels between the requiring component and contract monitors to more effectively identify opportunities to transition away from cost-reimbursable contracts when possible. Table 4 shows the total contracts reviewed at each site and the number of those contracts that met this section of the interim rule. Offutt AFB contracting personnel did not meet the interim rule requirement to document efforts to transition subsequent contracts to firm-fixed-price for 25 of the 50 contracts reviewed.

Table 4. Results of Efforts to Transition Subsequent Contracts to Firm-Fixed-Price

Site	Total Contracts	Did Not Meet Interim Rule
Offutt AFB	50	25
AFRL Rome	34	1
Hanscom AFB	28	7
Warner Robins AFB	44	9
Total	156	42

Ensuring that Government Resources Were Available to Monitor Award Varied by Site

Contracting personnel at Offutt AFB and AFRL Rome generally met the interim rule requirement to make adequate Government resources available to monitor a cost-reimbursable contract while contracting personnel at Hanscom AFB and Warner Robins AFB did not always implement the interim rule. Air Force contracting personnel did not ensure that adequate Government resources were available for 23 contracts, valued at approximately \$7.4 billion,⁶ of the 156 contracts reviewed. Contracting personnel at Hanscom AFB and Warner Robins AFB stated they retained the monitoring duties at the contracting level but did not document the decision in the contract files, or did not assign a COR because the contract values were minimal and other awards received priority for the limited COR resources available.

Air Force contracting personnel described their contracting procedures and explained their interpretation of the interim rule at each site visited. Air Force contracting personnel documented adequate Government resources available to monitor the contract

⁶ The contracts, valued at approximately \$7.4 billion, include 2 contracts valued at about \$7.35 billion.

award in the COR nomination letter, appointment letter, and training certificate. Site-specific explanations of contracts which did not satisfy the interim rule included:

- Hanscom AFB contracting personnel stated that contracts issued to support a federally funded research and development center did not require a COR.
- Warner Robins AFB contracting personnel stated that SBIR contracts do not always have oversight personnel because they are for an experimental product that may or may not turn into a valuable purchase.

We interpreted the interim rule to require documentation of adequate Government resources available to monitor award without an exception for federally funded research and development centers or SBIR contracts.

Air Force contracting officials should require contracting officers to document instances where the contracting office maintained the contracting officer representative functions on cost-reimbursable contracts. Table 5 shows the total contracts reviewed at each site and the number of those contracts that met this section of the interim rule. Contracting personnel at Warner Robins AFB did not meet the interim rule requirement to ensure adequate Government resources available to monitor contract award for 17 of the 44 contracts reviewed.

Table 5. Results of Government Resources Available to Monitor Award

Site	Total Contracts	Did Not Meet Interim Rule
Offutt AFB	50	1
AFRL Rome	34	0
Hanscom AFB	28	5
Warner Robins AFB	44	17
Total	156	23

Verifying That an Adequate Accounting System Was in Place Varied by Site

Contracting personnel at Offutt AFB and AFRL Rome generally met the interim rule requirement to ensure that an adequate accounting system was in place, whereas contracting personnel at Hanscom AFB and Warner Robins AFB did not always meet the interim rule. Air Force contracting personnel did not verify the adequacy of the contractor's accounting system for 42 contracts, valued at approximately \$1 billion, of the 156 contracts reviewed because contracting personnel stated they were not able to obtain timely assistance from DCAA, did not question the accounting system because the contract was awarded to a well-established contractor, or believed the accounting system was adequate because the award was issued under the SBIR program.

Air Force contracting personnel described their contracting procedures and explained their interpretation of the interim rule at each site visited. Air Force contracting personnel documented the adequacy of the contractor's accounting system with the DCAA report included in the contract documentation or with the reference to a DCAA report in the Price Negotiation Memorandum. We interpreted the interim rule to require a judgment from the contracting officer on the adequacy of the contractor's accounting system regardless of whether a DCAA audit is available. Offutt AFB contracting personnel stated that DCAA could not always provide up-to-date audits and that contracting personnel are forced to rely on outdated information.

We accepted SBIR contracts referencing an approved accounting system required to participate in the SBIR program. Warner Robins AFB contracting personnel stated that awards under the SBIR program were considered to have adequate accounting systems because contractors must have an adequate accounting system in place to qualify for the program.

Table 6 shows the total contracts reviewed at each site and the number of those contracts that met this section of the interim rule. Contracting personnel at Warner Robins AFB did not meet the interim rule requirement to document the adequacy of the contractor's accounting system for 27 of the 44 contracts reviewed. Air Force officials should emphasize the importance of the Federal Acquisition Regulation revisions to contracting personnel for the use of cost-reimbursable contracts.

Table 6. Results of Adequate Accounting System in Place

Site	Total Contracts	Did Not Meet Interim Rule
Offutt AFB	50	5
AFRL Rome	34	0
Hanscom AFB	28	10
Warner Robins AFB	44	27
Total	156	42

Guidance Differs Between FAR and DFARS

During our review, we noted a contradiction between the interim rule requirements and the Defense Federal Acquisition Regulation Supplement (DFARS) 242.75 "Contractor Accounting Systems and Related Controls," regarding the adequacy of the contractor's accounting system. DFARS 242.75 allowed the contracting officer to award a contract to a contractor with an inadequate accounting system. DFARS allowed the contracting officer to withhold payments as an incentive for corrective action if a contractor failed to make corrections to an inadequate accounting system. At Warner Robins AFB contracting personnel followed this regulation and withheld a portion of the vouchers submitted for progress payments as an incentive for corrective action. The interim rule does not allow any exceptions to award a cost-reimbursable contract to a contractor that does not have an adequate accounting system in place at the time of contract award. Director, Defense Procurement and Acquisition Policy, should initiate a process to eliminate the potential contradiction between Defense Federal Acquisition Regulation

Supplement 242.75 and the interim revisions for Federal Acquisition Regulation 7.105 “Contents of Written Acquisition Plans,” 16.104 “Factors in Selecting Contract Types,” and 42.302 “Contract Administration Functions” relating to contracting officers awarding cost-reimbursable contracts to contractors when the contracting officer determines the contractor’s accounting system is inadequate.

Firm-Fixed-Price Contracts Properly Classified

Air Force contracting personnel classified firm-fixed-price contracts correctly and did not avoid the increased cost-reimbursable contract documentation requirements by purposely miscoding contracts. We reviewed 181 contracts identified as firm-fixed-price contracts in Electronic Document Access that were issued by contracting personnel at the four Air Force sites visited. We reviewed some contracts that contained a small cost-reimbursable portion within the contract, but if the contract was predominately firm-fixed-price, we considered the award classified correctly. We determined that Air Force personnel properly classified these contracts.

Conclusion

Air Force contracting personnel did not consistently implement the interim rule for 75 contracts, valued at approximately \$8.8 billion, of the 156 contracts reviewed, valued at approximately \$10.5 billion. Air Force contracting personnel fully met the interim rule on 81 contracts, valued at approximately 1.7 billion, of the 156 contracts reviewed at the four Air Force sites visited. Air Force contracting personnel continue to issue cost-reimbursable contracts that may inappropriately increase the Air Force’s contracting risks because cost-reimbursable contracts provide less incentive for contractors to control costs. Air Force contracting personnel can do a better job planning, issuing, and overseeing cost-reimbursable contracts by fully implementing the FAR revisions. We included one DoD-wide recommendation in this report and will include other DoD-wide recommendations in the summary report issued at the completion of this series of reports.

Recommendations, Management Comments, and Our Response

1. We recommend that the Deputy Assistant Secretary of the Air Force (Contracting):

- a. Emphasize the importance of the Federal Acquisition Regulation revisions to contracting personnel for the use of cost-reimbursable contracts.**

Department of the Air Force Comments

The Deputy Assistant Secretary of the Air Force (Contracting), agreed and stated that a memorandum will be issued by May 31, 2013, emphasizing the importance of FAR revisions identified in the report.

- b. Promote the issuance of more hybrid contracts that contain multiple line items for the same service or item with different price structure so that contract type can be selected on each task or delivery order.**

Department of the Air Force Comments

The Deputy Assistant Secretary of the Air Force (Contracting) agreed and stated that a memorandum will be issued by May 31, 2013, which will include a reminder to consider issuing hybrid indefinite-delivery indefinite-quantity contracts to allow contract type to be selected at the task or delivery order level.

- c. Establish better communication channels between the requiring component, contracting personnel, and contract monitors to more effectively identify opportunities to transition away from cost-reimbursable contracts when possible.**

Department of the Air Force Comments

The Deputy Assistant Secretary of the Air Force (Contracting) agreed and stated that an element will be included in the Air Force Other Contracting Acquisition Plan template, by May 31, 2013, which prompts discussion of opportunities to transition to firm-fixed-price contracts.

- d. Require contracting officers to expressly document instances where the contracting officer maintained the contracting officer representative functions on cost-reimbursable contracts.**

Department of the Air Force Comments

The Deputy Assistant Secretary of the Air Force (Contracting) agreed and stated that a memorandum will be issued by May 31, 2013, emphasizing that contracting officers must document within the contract file the decision to retain or delegate surveillance activities for cost-reimbursable contracts.

Our Response

Comments from the Deputy Assistant Secretary of the Air Force (Contracting) are responsive and no further comments are required.

- 2. We recommend that the Director of Contracting, Warner Robins Air Force Sustainment Center adjust templates to require approval one level above the contracting officer for the use of cost-reimbursable contracts.**

Warner Robins Air Force Sustainment Center Comments

The Director of Contracting, Warner Robins Air Force Sustainment Center agreed and noted that the current template for the Air Force Streamlined Acquisition Strategy Summary requires approval one level above the contracting officer for cost-reimbursable contracts. The Director of Contracting, Warner Robins Air Force Sustainment Center also stated that in the event a Streamlined Acquisition Strategy Summary is not required,

the contracting officer will complete a Determinations and Findings for cost-reimbursable contracts which will require approval one level above the contracting officer. This requirement will be emphasized during the quarterly contracting officer training session held by May 31, 2013.

Our Response

Comments from the Director of Contracting, Warner Robins Air Force Sustainment Center are responsive and no further comments are required.

3. We recommend that the Director, Defense Procurement and Acquisition Policy, initiate a process to eliminate the potential contradiction between Defense Federal Acquisition Regulation Supplement 242.75 “Contractor Accounting Systems and Related Controls,” and the interim revisions for Federal Acquisition Regulation 7.105 “Contents of Written Acquisition Plans,” 16.104 “Factors in Selecting Contract Types,” and 42.302 “Contract Administration Functions” relating to contracting officers awarding cost-reimbursable contracts to contractors when the contracting officer determines the contractor’s accounting system is inadequate.

Defense Procurement and Acquisition Policy Comments

The Director, Defense Procurement and Acquisition Policy, agreed and stated that they will review any potential contradictions between the Defense Federal Acquisition Regulation Supplement 242.75 “Contractor Accounting Systems and Related Controls,” and the expanded Federal Acquisition Regulation requirements and take appropriate action, if required.

Our Response

Comments from the Director, Defense Procurement and Acquisition Policy, are responsive and no further comments are required.

Appendix A. Scope and Methodology

We conducted this performance audit from February 2012 through February 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We plan to issue separate reports for each Service, one report to include the Missile Defense Agency and the Defense Microelectronics Activity, as well as a summary report. This is the first report in the planned series of reports and includes contracts issued by the Department of the Air Force at the four sites visited. This audit was required by the FY 2009 National Defense Authorization Act, section 864, “Regulation on the Use of Cost Reimbursement Contracts.” Our objective was to determine whether DoD has complied with interim Federal Acquisition Regulation revisions on the use of cost-reimbursable contracts.

To determine compliance with the interim rule, our methodology included reviewing basic contract and task and delivery order files that varied slightly from the specific interim rule requirements. In cases where the interim rule required areas to be documented in the acquisition plan, we expanded our review to the entire contract file because, in many cases, the acquisition plan was written and approved before the interim rule was issued. Additionally, we focused our audit to assess how contracting personnel determined that adequate resources were available to monitor the award by determining whether a contracting officer’s representative (COR) or similar person was assigned to the contract at issuance. We did not determine whether the person assigned had an appropriate workload or was properly geographically located to monitor the award. We identified the assignment of a COR on the contracts rather than testing the adequacy of the COR assigned to the contract reviewed. Additionally, we determined whether the contracting officer documented that the contractor’s accounting system was adequate at contract award and not during the entire period of contract performance as required by the interim rule.

Universe and Sample Information

We visited four Air Force sites and reviewed 156 nonstatistically selected contracts with cost-reimbursable portions valued at approximately \$10.5 billion. We used the Federal Procurement Data System-Next Generation to identify a sample of cost-reimbursement, labor hour, and time and materials contracts issued by the Air Force from March 17, 2011 through February 29, 2012. We included task and delivery orders issued after March 17, 2011, in our sample even if the basic contract was issued before the interim rule. We limited the review to contracts valued at \$150,000 or above. We removed contract modifications from our sample because they were not new contract awards. We eliminated Air Force contracts that were issued on General Service Administration contracts. We queried all Air Force cost-reimbursable contracts from March 17, 2011

through February 29, 2012. Our universe consisted of 3,808 contract actions on 1,378 contracts, valued at approximately \$26 billion; however, this includes the value of all potential options and any firm-fixed-price portions of the contracts. We selected the four Air Force sites based on a combination of cost-reimbursable award amounts and number of cost-reimbursement contracts and task or delivery orders issued. The Air Force sites visited were Hanscom Air Force Base (AFB), Massachusetts; Offutt AFB, Nebraska; Air Force Research Laboratory, Rome, New York; and Warner Robins AFB, Georgia.

Our nonstatistical sample consisted of 50 contracts from each of the four Air Force sites to total 200 contracts. We reviewed as many of the 50 contracts that were readily available at each site. We removed 44 contracts total from our combined sample of 200 contracts because they were misclassified and were actually firm-fixed-price contracts, not located on the site, and were not reviewed due to time constraints during the site visit, or for other reasons.

Review of Documentation and Interviews

We reviewed documentation maintained by the Air Force's contracting offices. The documents reviewed included acquisition plans, business clearance memorandums, pre/post price negotiation memorandums, determination and findings for contract type, COR designation letters, COR training certificates, Defense Contract Audit Agency audit reports, Defense Contract Management Agency reports, and other documentation included in the contract file to comply with the interim rule. We reviewed contract award documentation including basic contract files from FY 2000 through FY 2012. We interviewed Air Force personnel responsible for awarding contracts as well as quality assurance personnel, such as CORs, who were responsible for monitoring the contracts.

At each Air Force site visited, we determined whether Air Force contracting personnel implemented the interim rule by documenting:

- the approval for the cost-reimbursable contract was at least one level above the contracting officer;
- the justification for the use of cost-reimbursable, time and materials, or labor-hour contracts;
- how the requirements under contract could transition to firm-fixed-price in the future;
- that Government resources were available to monitor the cost-reimbursable contract; and
- whether the contractor had an adequate accounting system in place during the entire contract.

We tested Air Force contracts to determine whether Air Force contracting personnel were misclassifying cost-reimbursable contracts as firm-fixed-price contracts. We used Federal Procurement Data System-Next Generation and Electronic Document Access to

review the firm-fixed-price contracts. We reviewed between 40 and 50 firm-fixed-price contracts at each site to determine whether contracts contained cost-reimbursable line items.

We experienced a scope limitation at Warner Robins AFB that had minimal impact on our audit. At this site, 10 of the 43 contracts we reviewed had classified portions. To keep the audit and report at an unclassified level we did not review classified documents. However, we determined that the classified documents likely made the awards in compliance with the interim rule requirements. Additionally, because these awards were only a small portion of the contracts reviewed, the results and our recommendations were not significantly affected.

Use of Computer-Processed Data

We did not rely on computer-processed data for this audit.

Use of Technical Assistance

The DoD Office of Inspector General Quantitative Methods Division (QMD) assisted with the audit. We worked with QMD during our planning phase to determine the number of sites per Service to visit and the number of contracts that should be reviewed at each site. QMD determined that we should visit 3 to 5 sites per Service and have a nonstatistical sample of at least 30 contracts per site. We will issue separate reports for each Service, one combined report for the Defense Agency and Activity, and a summary report. We decided to review all contracts if less than 30 contracts.

Prior Coverage

During the last 5 years, the Government Accountability Office, the Department of Homeland Security Inspector General, the General Services Administration Inspector General, and the National Aeronautics and Space Administration Inspector General have issued four reports discussing oversight of the use of cost-reimbursable contracts. Unrestricted Government Accountability Office reports can be accessed over the Internet at <http://www.gao.gov>. Unrestricted Department of Homeland Defense Inspector General reports can be accessed at www.oig.dhs.gov. Unrestricted General Services Administration Inspector General reports can be accessed at www.gsaig.gov. Unrestricted National Aeronautics and Space Administration Inspector General reports can be accessed at <http://oig.nasa.gov>.

Government Accountability Office

Government Accountability Office Report No. GAO-09-921, "Contract Management: Extent of Federal Spending Under Cost-Reimbursement Contracts Unclear and Key Controls Not Always Used," September 30, 2009

Department of Homeland Security Inspector General

Department of Homeland Security Report No. OIG-12-133, "Department of Homeland Security Compliance with the Federal Acquisition Regulation Revisions on Proper Use and Management of Cost-Reimbursement Contracts," September 28, 2012

General Services Administration Inspector General

General Services Administration Report No. A120052/Q/A/P120004, “Audit of GSA’s Cost-Reimbursement Contracts,” March 30, 2012

***National Aeronautics and Space Administration
Inspector General***

National Aeronautical and Space Administration Inspector General Report No. IG-12-014, “Final Memorandum on NASA’s Compliance with Provisions of the Duncan Hunter National Defense Authorization Act 2009–Management of Cost-Reimbursement Contracts,” March 14, 2012

Appendix B. Federal Acquisition Circular 2005-50 Issued March 16, 2011

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 7, 16, 32, 42, and 50

[FAC 2005-50; FAR Case 2008-030; Item
I; Docket 2011-0082, Sequence 1]

RIN 9000-AL78

Federal Acquisition Regulation; Proper Use and Management of Cost- Reimbursement Contracts

AGENCIES: Department of Defense (DoD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).

ACTION: Interim rule with request for
comments.

SUMMARY: DoD, GSA, and NASA are
issuing an interim rule amending the
Federal Acquisition Regulation (FAR) to
implement section 864 of the Duncan
Hunter National Defense Authorization
Act for Fiscal Year 2009. This law aligns

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with the Presidential Memorandum on Government Contracting, Issued on March 4, 2009, which directed agencies to save \$40 billion in contracting annually by Fiscal Year (FY) 2011 and to reduce the use of high-risk contracts. This rule provides regulatory guidance on the proper use and management of other than firm-fixed-price contracts (e.g., cost-reimbursement, time-and-material, and labor-hour).

DATES: *Effective Date:* March 16, 2011.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before May 16, 2011 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005-50, FAR Case 2008-030, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2008-030" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2008-030." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2008-030" on your attached document.

- *Fax:* (202) 501-4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAC 2005-50, FAR Case 2008-030, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Lori Sakalos, Procurement Analyst, at (202) 208-0498. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-50, FAR Case 2008-030.

SUPPLEMENTARY INFORMATION:

I. Background

This case implements section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), enacted October 14, 2008. This law aligns with the President's goal of reducing high-risk contracting as denoted in the March 4, 2009, Presidential Memorandum on Government Contracting.

Section 864 requires the FAR to be revised to address the use and management of cost-reimbursement contracts and identifies the following three areas that the Defense Acquisition Regulation Council and the Civilian Agency Acquisition Council (Councils) should consider in amending the FAR—

(a) Circumstances when cost-reimbursement contracts are appropriate;

(b) Acquisition plan findings to support the selection of a cost-reimbursement contract; and

(c) Acquisition resources necessary to award and manage a cost-reimbursement contract.

1. *Guidance on Cost-reimbursement contracts.* As required, the Councils included additional coverage at FAR subpart 16.1, Selecting Contract Types, and at subpart 16.3, Cost-Reimbursement Contracts, to provide further guidance as to when, and under what circumstances, cost-reimbursement contracts are appropriate. Therefore, this rule makes the following changes:

- FAR 16.103, Negotiating contract type, is amended to revise paragraph (d) to reflect additional documentation when other than a firm-fixed-price contract type is selected.

- FAR 16.104, Factors in selecting contract types, is amended to add a new paragraph (e) to provide guidance to the contracting officer to consider combining contract types if the entire contract cannot be firm fixed-price.

- FAR 16.301-2, Application, is amended to provide guidance to the contracting officer as to the circumstances in which to use cost-reimbursement contracts as well as outlining the rationale for documentation for selecting this contract type.

- FAR 16.301-3, Limitations, is amended to (1) provide additional guidance to the contracting officer as to when a cost-reimbursement contract may be used, (2) ensure that all factors have been considered per FAR 16.104, and (3) ensure that adequate Government resources are available to award and manage this type of contract.

- FAR 7.104(e) also requires the designation of a properly trained contracting officer's representative (COR) (or contracting officer's technical representative (COTR)) prior to award of the contract or order.

2. *Identification of acquisition plan findings.* FAR 7.103, Agency-head responsibilities, is amended and renumbered to add new paragraphs 7.103(d), 7.103(f), and 7.103(j) to ensure that acquisition planners document the file to support the selection of the

contract type in accordance with FAR subpart 16.1; ensure that the statement of work is closely aligned with the performance outcomes and cost estimates; and obtain an approval and signature from the appropriate acquisition official at least one level above the contracting officer. FAR 7.105(b)(5)(iv) was added to discuss the strategy to transition from cost-reimbursement contracts to firm-fixed-price contracts. Although FAR 7.105(b)(5), Acquisition considerations, requires the acquisition plans to include a discussion of contract type selection and rationale, the Councils believe that a greater emphasis on the use of cost-reimbursement contracts should be added and included a new paragraph at FAR 7.105(b)(3), Contract type selection. Additionally, FAR 16.301-3(a) has been amended and renumbered.

3. *Acquisition workforce resources.* The Councils recognize that assigning adequate and proper resources to support the solicitation, award, and administration of other than firm-fixed-price contracts (cost-reimbursement, time-and-material, and labor-hour) contract is challenging. There is also great concern that a lack of involvement in contract oversight by program offices is primarily present in other than firm-fixed-price contracts. Therefore, from the outset, contracting officers should be assured, to the greatest extent practicable, that the right resources in number, kind, and availability be assigned to support other than firm-fixed-price contracts. The Councils consider that greater accountability for the management and oversight of all contracts, especially other than firm-fixed-price contracts, can be gained and improved by requiring that properly trained CORs or COTRs (see FAR 2.101(b)(2), Definitions) be appointed before award. Therefore, FAR 7.104, General Procedures, and FAR 16.301-3(a)(4)(i) are amended to reflect that prior to award of a contract, especially on other than firm-fixed price contracts, at least one COR or COTR qualified in accordance with FAR 1.602-2 is designated. FAR 1.602-2, Responsibilities, is amended to add a new paragraph (d) outlining the requirement for the contracting officer to designate and authorize, in writing, a COR on contracts and orders, as appropriate. Additionally, a new section was added at FAR 1.604, Contracting officer's representative, outlining the COR's duties.

4. *Contract administration functions.* A new paragraph was added at FAR 42.302(a)(12) to require that the contracting officer determine the continuing adequacy of the contractor's

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accounting system during the entire period of contract performance. Also, paragraph (a)(12) was added to the list of functions at FAR 42.302(a) that cannot be retained and that must be delegated by the contracting officer when delegating contract administration functions to a contract administration office in accordance with FAR 42.202(a).

II. Executive Order 12866

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because section 864 affects only internal Government operations and requires the Government to establish internal guidance on the proper use and management of all contracts especially other than firm-fixed-price contracts (e.g., cost-reimbursement, time-and-material, and labor-hour) and does not impose any additional requirements on small businesses.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD, GSA, and NASA invite comments from small business entities and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005-50, FAR Case 2008-030) in correspondence.

IV. Paperwork Reduction Act

The changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and

compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, enacted October 14, 2008, directs that it must be implemented within 270 days from enactment. This rule is also urgent because this law requires the Inspector General to conduct a compliance review for each executive agency, one year after the regulations have been promulgated, on the use of cost-reimbursement contracts and include the results of their findings in the IG's next semiannual report. However, pursuant to 41 U.S.C. 1707 and FAR 1.501-3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 2, 7, 16, 32, 42, and 50

Government procurement.

Dated: March 4, 2011.

Millisa Gary,
Acting Director, Office of Governmentwide
Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 7, 16, 32, 42, and 50 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 7, 16, 32, 42, and 50 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. Amend section 1.602-2 by adding paragraph (d) to read as follows:

1.602-2 Responsibilities.

* * * * *

(d) Designate and authorize, in writing, a contracting officer's representative (COR) on all contracts and orders other than those that are firm-fixed price, and for firm-fixed-price contracts and orders as appropriate. However, the contracting officer is not precluded from retaining and executing the COR duties as appropriate. See 7.104(e). A COR—

(1) Must be a Government employee, unless otherwise authorized in agency regulations;

(2) Shall be certified and maintain certification in accordance with the Office of Management and Budget memorandum entitled "The Federal Acquisition Certification for Contracting Officer Technical Representatives" dated November 26, 2007, or for DoD, DoD Regulations, as applicable;

(3) Must be qualified by training and experience commensurate with the responsibilities to be delegated in accordance with department/agency guidelines;

(4) May not be delegated responsibility to perform functions that have been delegated under 42.202 to a contract administration office, but may be assigned some duties at 42.302 by the contracting officer;

(5) Has no authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract; and

(6) Must be designated in writing, with copies furnished to the contractor and the contract administration office—

(i) Specifying the extent of the COR's authority to act on behalf of the contracting officer;

(ii) Identifying the limitations on the COR's authority;

(iii) Specifying the period covered by the designation;

(iv) Stating the authority is not redelegable; and

(v) Stating that the COR may be personally liable for unauthorized acts.

■ 3. Amend section 1.603 by revising the section heading to read as follows:

1.603 Selection, appointment, and termination of appointment for contracting officers.

* * * * *

■ 4. Add section 1.604 to read as follows:

1.604 Contracting Officer's Representative (COR).

A contracting officer's representative (COR) assists in the technical monitoring or administration of a contract (see 1.602-2(d)). The COR shall maintain a file for each assigned contract. The file must include, at a minimum—

(a) A copy of the contracting officer's letter of designation and other documents describing the COR's duties and responsibilities;

(b) A copy of the contract administration functions delegated to a contract administration office which may not be delegated to the COR (see 1.602-2(d)(4)); and

(c) Documentation of COR actions taken in accordance with the delegation of authority.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 5. Amend section 2.101 in paragraph (b)(2) by adding, in alphabetical order, the definition "Contracting officer's representative (COR)" to read as follows:

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2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Contracting officer's representative (COR) means an individual, including a contracting officer's technical representative (COTR), designated and authorized in writing by the contracting officer to perform specific technical or administrative functions.

* * * * *

PART 7—ACQUISITION PLANNING

■ 6. Amend section 7.102 by adding paragraph (a)(3) to read as follows:

7.102 Policy.

(a) * * *

(3) Selection of appropriate contract type in accordance with part 16.

* * * * *

■ 7. Amend section 7.103 by—

- a. Redesignating paragraphs (e) through (w) as paragraphs (g) through (y);
- b. Redesignating paragraph (d) as paragraph (e);
- c. Adding a new paragraph (d);
- d. Revising newly redesignated paragraph (e);
- e. Adding a new paragraph (f); and
- f. Revising newly redesignated paragraph (j).

The added and revised text reads as follows:

7.103 Agency-head responsibilities.

* * * * *

(d) Ensuring that acquisition planners document the file to support the selection of the contract type in accordance with subpart 16.1.

(e) Establishing criteria and thresholds at which increasingly greater detail and formality in the planning process is required as the acquisition becomes more complex and costly, including for cost-reimbursement and other high-risk contracts (e.g., other than firm-fixed-price contracts) requiring a written acquisition plan. A written plan shall be prepared for cost reimbursement and other high-risk contracts other than firm-fixed-price contracts, although written plans may be required for firm-fixed-price contracts as appropriate.

(f) Ensuring that the statement of work is closely aligned with performance outcomes and cost estimates.

* * * * *

(j) Reviewing and approving acquisition plans and revisions to these plans to ensure compliance with FAR requirements including 7.104 and part 16. For other than firm-fixed-price contracts, ensuring that the plan is

approved and signed at least one level above the contracting officer.

* * * * *

■ 8. Amend section 7.104 by adding paragraph (e) to read as follows:

7.104 General procedures.

* * * * *

(e) The planner shall ensure that a COR is nominated by the requirements official, and designated and authorized by the contracting officer, as early as practicable in the acquisition process. The contracting officer shall designate and authorize a COR as early as practicable after the nomination. See 1.602–2(d).

■ 9. Amend section 7.105 by—

- a. Removing from the first sentence of the introductory text the words “see paragraph (b)(19)” and adding the words “see paragraph (b)(21)” in their place;
- b. Redesignating paragraphs (b)(3) through (b)(21) as paragraphs (b)(4) through (b)(22), respectively;
- c. Adding a new paragraph (b)(3);
- d. Removing from newly redesignated paragraph (b)(5)(i) the words “contract type selection (see part 16)”;
- e. Removing from newly redesignated paragraph (b)(5)(ii)(A) the words “see 7.103(t)” and adding the words “see 7.103(v)” in its place; and
- f. Adding paragraph (b)(5)(iv).

The added text reads as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(3) *Contract type selection.* Discuss the rationale for the selection of contract type. For other than firm-fixed-price contracts, see 16.103(d) for additional documentation guidance. Acquisition personnel shall document the acquisition plan with findings that detail the particular facts and circumstances, (e.g., complexity of the requirements, uncertain duration of the work, contractor's technical capability and financial responsibility, or adequacy of the contractor's accounting system), and associated reasoning essential to support the contract type selection. The contracting officer shall ensure that requirements and technical personnel provide the necessary documentation to support the contract type selection.

* * * * *

(5) * * *

(iv) For each contract (and order) contemplated, discuss the strategy to transition to firm-fixed-price contracts to the maximum extent practicable. During the requirements development stage, consider structuring the contract

requirements, e.g., contract line items (CLINS), in a manner that will permit some, if not all, of the requirements to be awarded on a firm-fixed-price basis, either in the current contract, future option years, or follow-on contracts. This will facilitate an easier transition to a firm-fixed-price contract because a cost history will be developed for a recurring definitive requirement.

* * * * *

PART 16—TYPES OF CONTRACTS

■ 10. Amend section 16.103 by revising paragraphs (d)(1) and (2) to read as follows:

16.103 Negotiating contract type.

* * * * *

(d) * * *

(1) Each contract file shall include documentation to show why the particular contract type was selected. This shall be documented in the acquisition plan, or if a written acquisition plan is not required, in the contract file.

(i) Explain why the contract type selected must be used to meet the agency need.

(ii) Discuss the Government's additional risks and the burden to manage the contract type selected (e.g., when a cost-reimbursement contract is selected, the Government incurs additional cost risks, and the Government has the additional burden of managing the contractor's costs). For such instances, acquisition personnel shall discuss—

(A) How the Government identified the additional risks (e.g., pre-award survey, or past performance information);

(B) The nature of the additional risks (e.g., inadequate contractor's accounting system, weaknesses in contractor's internal control, non-compliance with Cost Accounting Standards, or lack of or inadequate earned value management system); and

(C) How the Government will manage and mitigate the risks.

(iii) Discuss the Government resources necessary to properly plan for, award, and administer the contract type selected (e.g., resources needed and the additional risks to the Government if adequate resources are not provided).

(iv) For other than a firm-fixed price contract, at a minimum the documentation should include—

(A) An analysis of why the use of other than a firm-fixed-price contract (e.g., cost reimbursement, time and materials, labor hour) is appropriate;

(B) Rationale that detail the particular facts and circumstances (e.g.,

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complexity of the requirements, uncertain duration of the work, contractor's technical capability and financial responsibility, or adequacy of the contractor's accounting system), and associated reasoning essential to support the contract type selection;

(C) An assessment regarding the adequacy of Government resources that are necessary to properly plan for, award, and administer other than firm-fixed-price contracts; and

(D) A discussion of the actions planned to minimize the use of other than firm-fixed-price contracts on future acquisitions for the same requirement and to transition to firm-fixed-price contracts to the maximum extent practicable.

(v) A discussion of why a level-of-effort, price redetermination, or fee provision was included.

(2) Exceptions to the requirements at (d)(1) of this section are—

(i) Fixed-price acquisitions made under simplified acquisition procedures;

(ii) Contracts on a firm-fixed-price basis other than those for major systems or research and development; and

(iii) Awards on the set-aside portion of sealed bid partial set-asides for small business.

* * * * *

■ 11. Amend section 16.104 by—

■ a. Redesignating paragraphs (e) through (k) as paragraphs (f) through (l), respectively;

■ b. Adding a new paragraph (e);

■ c. Removing from newly redesignated paragraph (f) the words “incentives to ensure” and adding the words “incentives tailored to performance outcomes to ensure” in their place;

■ d. Removing from newly redesignated paragraph (g) the words “price adjustment terms” and adding the words “price adjustment or price redetermination clauses” in their place; and

■ e. Revising newly redesignated paragraph (i).

The added and revised text reads as follows:

16.104 Factors in selecting contract types.

* * * * *

(e) *Combining contract types.* If the entire contract cannot be firm-fixed-price, the contracting officer shall consider whether or not a portion of the contract can be established on a firm-fixed-price basis.

* * * * *

(i) *Adequacy of the contractor's accounting system.* Before agreeing on a contract type other than firm-fixed-price, the contracting officer shall

ensure that the contractor's accounting system will permit timely development of all necessary cost data in the form required by the proposed contract type. This factor may be critical—

(1) When the contract type requires price revision while performance is in progress; or

(2) When a cost-reimbursement contract is being considered and all current or past experience with the contractor has been on a fixed-price basis. *See* 42.302(a)(12).

* * * * *

■ 12. Revise section 16.301-2 to read as follows:

16.301-2 Application.

(a) The contracting officer shall use cost-reimbursement contracts only when—

(1) Circumstances do not allow the agency to define its requirements sufficiently to allow for a fixed-price type contract (*see* 7.105); or

(2) Uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

(b) The contracting officer shall document the rationale for selecting the contract type in the written acquisition plan and ensure that the plan is approved and signed at least one level above the contracting officer (*see* 7.103(j) and 7.105). If a written acquisition plan is not required, the contracting officer shall document the rationale in the contract file. *See also* 16.103(d).

■ 13. Amend section 16.301-3 by revising paragraph (a) to read as follows:

16.301-3 Limitations.

(a) A cost-reimbursement contract may be used only when—

(1) The factors in 16.104 have been considered;

(2) A written acquisition plan has been approved and signed at least one level above the contracting officer;

(3) The contractor's accounting system is adequate for determining costs applicable to the contract; and

(4) Adequate Government resources are available to award and manage a contract other than firm-fixed-priced (*see* 7.104(e)) including—

(i) Designation of at least one contracting officer's representative (COR) qualified in accordance with 1.602-2 has been made prior to award of the contract or order; and

(ii) Appropriate Government surveillance during performance to provide reasonable assurance that efficient methods and effective cost controls are used.

* * * * *

PART 32—CONTRACT FINANCING

32.1007 [Amended]

■ 14. Amend section 32.1007 by removing from paragraph (a) “(*see* 42.302(a)(12))” and adding “(*see* 42.302(a)(13))” in its place.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 15. Amend section 42.302 by—

■ a. Removing from the introductory text of paragraph (a) the words “paragraphs (a)(5), (a)(9), and (a)(11)” and adding the words “paragraphs (a)(5), (a)(9), (a)(11), and (a)(12)” in their place;

■ b. Redesignating paragraphs (a)(12) through (a)(26) as paragraphs (a)(13) through (a)(27); and

■ c. Adding a new paragraph (a)(12) to read as follows:

42.302 Contract administration functions.

(a) * * *

(12) Determine the adequacy of the contractor's accounting system. The contractor's accounting system should be adequate during the entire period of contract performance. The adequacy of the contractor's accounting system and its associated internal control system, as well as contractor compliance with the Cost Accounting Standards (CAS), affect the quality and validity of the contractor data upon which the Government must rely for its management oversight of the contractor and contract performance.

* * * * *

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

50.205-1 [Amended]

■ 16. Amend section 50.205-1 by removing from the first sentence in paragraph (b) the words “(*see* FAR 7.105(b)(19)(v))” and adding the words “(*see* 7.105(b)(20)(v))” in their place.

[FR Doc. 2011-5552 Filed 3-15-11; 8:45 am]

BILLING CODE 6820-EP-P

Appendix C. Contract Compliance with Interim Rule Requirements

(Base Documentation Applies to Orders)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value
1	FA1500-10-D-0001	0002	Offutt AFB	No	No	No	Yes	No	\$ 439,088
2	FA1500-10-D-0002	0003	Offutt AFB	No	No	No	No	Yes	4,923,788
3	FA1500-10-D-0003	0002	Offutt AFB	No	No	No	Yes	No	449,651
4	FA1500-10-D-0004	0002	Offutt AFB	No	No	No	Yes	No	2,558,590
5	FA1500-10-D-0005	0004	Offutt AFB	Yes	No	No	Yes	No	3,499,964
6	FA1500-10-D-0010	0005	Offutt AFB	Yes	Yes	Yes	Yes	Yes	199,989
7	FA4600-06-D-0003	0048	Offutt AFB	No	No	No	Yes	No	15,254,382
8	FA4600-08-D-0001	0015	Offutt AFB	Yes	Yes	Yes	Yes	Yes	3,091,488
9	FA4600-08-D-0002	5066	Offutt AFB	Yes	Yes	Yes	Yes	Yes	8,699,930
10	FA4600-08-D-0002	5072	Offutt AFB	Yes	Yes	Yes	Yes	Yes	2,109,313
11	FA4600-08-D-0002	5073	Offutt AFB	Yes	Yes	Yes	Yes	Yes	107,276
12	FA4600-08-D-0002	5074	Offutt AFB	Yes	Yes	Yes	Yes	Yes	105,582
13	FA4600-08-D-0002	5076	Offutt AFB	Yes	Yes	Yes	Yes	Yes	11,900,919
14	FA4600-09-D-0008	0006	Offutt AFB	Yes	Yes	Yes	Yes	Yes	3,043,083
15	HC1047-05-D-4000	0169	Offutt AFB	Yes	No	No	Yes	Yes	991,572
16	HC1047-05-D-4000	0173	Offutt AFB	No	No	No	Yes	Yes	23,797,720
17	HC1047-05-D-4000	0177	Offutt AFB	No	No	No	Yes	Yes	24,293,509
18	HC1047-05-D-4000	0180	Offutt AFB	No	No	No	Yes	Yes	19,999,995
19	HC1047-05-D-4000	0183	Offutt AFB	No	No	No	Yes	Yes	24,937,888
20	HC1047-05-D-4000	0186	Offutt AFB	No	No	No	Yes	Yes	4,900,000

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

Appendix C. Contract Compliance with Interim Rule Requirements

(Base Documentation Applies to Orders)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value
21	HC1047-05-D-4000	0187	Offutt AFB	Yes	No	No	Yes	Yes	49,853,499
22	HC1047-05-D-4000	0190	Offutt AFB	No	No	No	Yes	Yes	25,135,974
23	HC1047-05-D-4000	0191	Offutt AFB	No	No	No	Yes	Yes	20,394,077
24	HC1047-05-D-4000	0195	Offutt AFB	Yes	No	No	Yes	Yes	31,730,294
25	HC1047-05-D-4000	0201	Offutt AFB	No	No	No	Yes	Yes	19,389,442
26	HC1047-05-D-4005	0179	Offutt AFB	Yes	Yes	Yes	Yes	Yes	4,955,555
27	HC1047-05-D-4005	0176	Offutt AFB	Yes	Yes	Yes	Yes	Yes	6,795,368
28	HC1047-05-D-4005	0181	Offutt AFB	Yes	Yes	Yes	Yes	Yes	24,787,307
29	HC1047-05-D-4005	0183	Offutt AFB	Yes	Yes	Yes	Yes	Yes	24,312,345
30	HC1047-05-D-4005	0190	Offutt AFB	Yes	Yes	Yes	Yes	Yes	49,181,949
31	HC1047-05-D-4005	0195	Offutt AFB	Yes	Yes	Yes	Yes	Yes	31,730,294
32	HC1047-05-D-4005	0197	Offutt AFB	Yes	Yes	Yes	Yes	Yes	36,688,145
33	HC1047-05-D-4005	0201	Offutt AFB	Yes	Yes	Yes	Yes	Yes	24,690,117
34	HC1047-05-D-4005	0212	Offutt AFB	Yes	Yes	Yes	Yes	Yes	48,785,310
35	HC1047-05-D-4005	0222	Offutt AFB	Yes	Yes	Yes	Yes	Yes	42,637,576
36	SP0700-00-D-3180	0696	Offutt AFB	Yes	Yes	No	Yes	Yes	4,762,556
37	SP0700-00-D-3180	0699	Offutt AFB	Yes	Yes	No	Yes	Yes	22,894,893
38	SP0700-00-D-3180	0714	Offutt AFB	Yes	Yes	No	Yes	Yes	39,432,909
39	SP0700-00-D-3180	0715	Offutt AFB	Yes	Yes	No	Yes	Yes	3,548,838

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

Appendix C. Contract Compliance with Interim Rule Requirements

(Base Documentation Applies to Orders)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value
40	SP0700-00-D-3180	0716	Offutt AFB	Yes	Yes	No	Yes	Yes	14,738,940
41	SP0700-00-D-3180	0725	Offutt AFB	Yes	Yes	No	Yes	Yes	22,857,886
42	SP0700-00-D-3180	0728	Offutt AFB	Yes	Yes	No	Yes	Yes	4,859,448
43	SP0700-00-D-3180	0731	Offutt AFB	Yes	Yes	No	Yes	Yes	296,896
44	SP0700-03-D-1380	0410	Offutt AFB	Yes	Yes	Yes	Yes	Yes	24,732,132
45	SP0700-03-D-1380	0411	Offutt AFB	Yes	Yes	Yes	Yes	Yes	8,770,191
46	SP0700-03-D-1380	0412	Offutt AFB	Yes	Yes	Yes	Yes	Yes	3,965,278
47	SP0700-03-D-1380	0416	Offutt AFB	Yes	Yes	Yes	Yes	Yes	13,138,273
48	SP0700-03-D-1380	0428	Offutt AFB	Yes	Yes	Yes	Yes	Yes	23,747,897
49	SP0700-03-D-1380	0437	Offutt AFB	Yes	Yes	Yes	Yes	Yes	7,923,168
50	SP0700-03-D-1380	0446	Offutt AFB	Yes	Yes	Yes	Yes	Yes	9,183,982
	Offutt AFB Subtotal:			37	33	25	49	45	\$ 801,224,266
51	FA8750-11-C-0160		AFRL Rome	Yes	Yes	Yes	Yes	Yes	5,893,139
52	FA8750-11-C-0173		AFRL Rome	Yes	Yes	Yes	Yes	Yes	1,867,550
53	FA8750-11-C-0200		AFRL Rome	Yes	Yes	Yes	Yes	Yes	49,849,498
54	FA8750-11-C-0201		AFRL Rome	Yes	Yes	Yes	Yes	Yes	34,033,276
55	FA8750-11-C-0205		AFRL Rome	Yes	Yes	Yes	Yes	Yes	750,000
56	FA8750-11-C-0209		AFRL Rome	Yes	Yes	Yes	Yes	Yes	749,971
57	FA8750-11-C-0252		AFRL Rome	Yes	Yes	Yes	Yes	Yes	10,000,000

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

Appendix C. Contract Compliance with Interim Rule Requirements

(Base Documentation Applies to Orders)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value
58	FA8750-11-C-0249		AFRL Rome	Yes	Yes	Yes	Yes	Yes	7,469,343
59	FA8750-12-C-0021		AFRL Rome	Yes	Yes	Yes	Yes	Yes	15,202,680
60	FA8750-12-C-0072		AFRL Rome	Yes	Yes	Yes	Yes	Yes	499,048
61	FA8750-12-C-0105		AFRL Rome	Yes	Yes	Yes	Yes	Yes	9,999,919
62	FA8750-12-C-0117		AFRL Rome	Yes	Yes	Yes	Yes	Yes	489,637
63	FA8750-12-C-0118		AFRL Rome	Yes	Yes	Yes	Yes	Yes	458,969
64	FA8750-08-D-0001	0008	AFRL Rome	Yes	Yes	Yes	Yes	Yes	4,489,213
65	FA8750-08-D-0001	0010	AFRL Rome	Yes	Yes	No	Yes	Yes	259,931
66	FA8750-08-D-0206	0009	AFRL Rome	Yes	Yes	Yes	Yes	Yes	686,647
67	FA8750-09-D-0182	0018	AFRL Rome	Yes	Yes	Yes	Yes	Yes	2,254,674
68	FA8750-10-D-0197	0003	AFRL Rome	Yes	Yes	Yes	Yes	Yes	713,724
69	FA8750-11-D-0157	0003	AFRL Rome	Yes	Yes	Yes	Yes	Yes	1,297,695
70	FA8750-11-C-0064		AFRL Rome	Yes	Yes	Yes	Yes	Yes	23,699,918
71	FA8750-09-D-0138	0008	AFRL Rome	Yes	Yes	Yes	Yes	Yes	542,728
72	FA8750-09-D-0139	0012	AFRL Rome	Yes	Yes	Yes	Yes	Yes	609,966
73	FA8750-09-D-0140	0005	AFRL Rome	Yes	Yes	Yes	Yes	Yes	975,986
74	FA8750-09-D-0195	0007	AFRL Rome	Yes	Yes	Yes	Yes	Yes	624,996
75	FA8750-09-D-0195	0008	AFRL Rome	Yes	Yes	Yes	Yes	Yes	3,372,705
76	FA8750-09-D-0195	0011	AFRL Rome	Yes	Yes	Yes	Yes	Yes	482,471

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

Appendix C. Contract Compliance with Interim Rule Requirements

(Base Documentation Applies to Orders)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value
77	FA8750-11-C-0227		AFRL Rome	Yes	Yes	Yes	Yes	Yes	393,530
78	FA8750-11-C-0231		AFRL Rome	Yes	Yes	Yes	Yes	Yes	577,414
79	FA8750-12-C-0098		AFRL Rome	Yes	Yes	Yes	Yes	Yes	662,431
80	FA9875-11-C-0108		AFRL Rome	Yes	Yes	Yes	Yes	Yes	5,944,429
81	FA8750-11-C-0267		AFRL Rome	Yes	Yes	Yes	Yes	Yes	1,406,714
82	FA8750-12-C-0095		AFRL Rome	Yes	Yes	Yes	Yes	Yes	1,033,509
83	FA8750-11-C-0180		AFRL Rome	Yes	Yes	Yes	Yes	Yes	11,619,193
84	FA8750-12-C-0015		AFRL Rome	Yes	Yes	Yes	Yes	Yes	598,915
	AFRL Rome Subtotal:			34	34	33	34	34	\$ 199,509,819
85	FA8721-11-D-0001		Hanscom AFB	Yes	Yes	Yes	Yes	Yes	88,500,000
86	FA8721-08-D-0001	0021	Hanscom AFB	No	No	No	No	No	2,182,965
87	FA8721-11-D-0001	0003	Hanscom AFB	Yes	Yes	Yes	Yes	Yes	4,804,817
88	FA8307-11-C-0010		Hanscom AFB	Yes	Yes	No	Yes	Yes	34,134,114
89	FA8730-12-C-0004		Hanscom AFB	Yes	Yes	Yes	Yes	No	76,619,379
90	FA8723-10-D-0001	0007	Hanscom AFB	Yes	Yes	Yes	Yes	No	463,688
91	F19628-01-D-0016	0025	Hanscom AFB	Yes	Yes	Yes	Yes	Yes	192,000
92	FA8771-04-D-0002	RSCC	Hanscom AFB	Yes	Yes	No	No	No	544,943
93	FA8721-11-C-0007		Hanscom AFB	Yes	Yes	No	No	Yes	3,676,574,986
94	FA8721-12-C-0007		Hanscom AFB	Yes	Yes	No	No	Yes	3,676,574,986

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

Appendix C. Contract Compliance with Interim Rule Requirements

(Base Documentation Applies to Orders)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value
95	FA8730-08-D-0001	0064	Hanscom AFB	Yes	Yes	Yes	Yes	No	2,477,761
96	FA8721-12-C-0001		Hanscom AFB	Yes	Yes	Yes	Yes	Yes	238,000
97	FA8523-04-D-0002	RS10	Hanscom AFB	No	Yes	Yes	Yes	No	33,340
98	F19628-01-D-0016	0078	Hanscom AFB	Yes	Yes	No	Yes	No	11,156,215
99	FA8307-12-C-0003		Hanscom AFB	Yes	Yes	No	No	No	925,902
100	FA8707-09-D-0004	0027	Hanscom AFB	Yes	Yes	Yes	Yes	Yes	1,469,288
101	FA8707-11-D-0001	0007	Hanscom AFB	Yes	Yes	Yes	Yes	No	41,130
102	FA8720-10-D-0001	0004	Hanscom AFB	Yes	Yes	Yes	Yes	No	27,983,811
103	FA8720-10-D-0004	0003	Hanscom AFB	Yes	Yes	Yes	Yes	Yes	9,716,831
104	FA8707-11-D-0002	0003	Hanscom AFB	Yes	Yes	Yes	Yes	Yes	182,038
105	FA8707-11-D-0002	0005	Hanscom AFB	Yes	Yes	Yes	Yes	Yes	366,165
106	FA8707-11-D-0003		Hanscom AFB	Yes	Yes	Yes	Yes	Yes	55,259,368
107	FA8707-11-D-0003	0001	Hanscom AFB	Yes	Yes	Yes	Yes	Yes	496,523
108	FA8707-11-D-0003	0008	Hanscom AFB	Yes	Yes	Yes	Yes	Yes	211,074
109	FA8707-11-C-0012		Hanscom AFB	No	Yes	Yes	Yes	Yes	2,835,371
110	FA8707-12-C-0001		Hanscom AFB	Yes	Yes	Yes	Yes	Yes	483,750,912
111	FA8720-10-D-0005	0002	Hanscom AFB	Yes	Yes	Yes	Yes	Yes	4,477,178
112	FA8720-10-D-0002	0002	Hanscom AFB	Yes	Yes	Yes	Yes	Yes	22,878,377
	Hanscom AFB Subtotal:			25	27	21	23	18	\$ 8,185,091,164

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

Appendix C. Contract Compliance with Interim Rule Requirements

(Base Documentation Applies to Orders)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value
113	FA8509-12-C-0001		Warner Robins AFB	Yes	Yes	Yes	Yes	Yes	23,161,368
114	FA8505-12-D-0002		Warner Robins AFB	No	Yes	Yes	Yes	Yes	3,714,728
115	FA8505-11-C-0003		Warner Robins AFB	Yes	Yes	Yes	Yes	No	7,172,845
116	FA8505-10-D-0002	0006	Warner Robins AFB	Yes	Yes	Yes	No	No	300,000
117	F33657-01-D-0026	RJ61	Warner Robins AFB	Yes	Yes	Yes	Yes	No	346,414
118	F09603-00-D-0210	0130	Warner Robins AFB	No	No	No	Yes	No	99,512,589
119	F09604-03-D-0057	9001	Warner Robins AFB	No	No	No	No	No	8,990,693
120	FA8527-08-D-0002	0010	Warner Robins AFB	No	No	No	No	No	2,290,373
121	FA8527-08-D-0008	0025	Warner Robins AFB	No	No	No	No	No	30,465,407
122	FA8527-10-D-0001	0012	Warner Robins AFB	No	No	No	No	No	557,010
123	FA8527-10-D-0005	0004	Warner Robins AFB	No	Yes	No	No	No	6,140,968
124	FA8527-10-D-0005	0006	Warner Robins AFB	No	Yes	No	No	No	2,797,979
125	FA8771-04-D-0004	Q614	Warner Robins AFB	Yes	Yes	Yes	Yes	No	18,754,342
126	FA8501-11-C-0048		Warner Robins AFB	No	Yes	Yes	No	No	739,204
127	FA8501-11-C-0012		Warner Robins AFB	No	Yes	Yes	No	Yes	399,979
128	FA8501-05-D-0002	0061	Warner Robins AFB	Yes	Yes	Yes	Yes	Yes	4,282,881
129	FA8540-12-C-0007		Warner Robins AFB	Yes	Yes	Yes	Yes	Yes	11,112,091
130	FA8552-11-C-0009		Warner Robins AFB	No	Yes	Yes	Yes	No	3,300,000
131	FA8552-11-C-0010		Warner Robins AFB	Yes	Yes	Yes	Yes	Yes	774,307

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

Appendix C. Contract Compliance with Interim Rule Requirements

(Base Documentation Applies to Orders)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value
132	FA8553-11-C-0005		Warner Robins AFB	Yes	Yes	Yes	Yes	Yes	2,567,844
133	FA8553-12-C-0001		Warner Robins AFB	Yes	Yes	Yes	Yes	Yes	1,991,156
134	FA8501-11-C-0040		Warner Robins AFB	No	Yes	Yes	No	Yes	747,290
135	FA8501-11-C-0045		Warner Robins AFB	No	Yes	Yes	No	No	739,161
136	FA8527-11-D-0011		Warner Robins AFB	Yes	Yes	Yes	Yes	No	690,200,000
137	FA8528-11-C-0020		Warner Robins AFB	No	No	No	Yes	Yes	4,615,689
138	FA8528-11-C-0003		Warner Robins AFB	Yes	Yes	Yes	Yes	Yes	316,252,090
139	FA8501-11-C-0051		Warner Robins AFB	No	Yes	Yes	No	No	739,863
140	FA8523-11-C-0010		Warner Robins AFB	Yes	Yes	Yes	Yes	No	2,490,917
141	FA8525-11-C-0005		Warner Robins AFB	No	Yes	Yes	Yes	Yes	3,449,999
142	FA8538-11-C-0007		Warner Robins AFB	No	Yes	Yes	No	Yes	1,018,348
143	FA8538-11-C-0011		Warner Robins AFB	No	Yes	Yes	No	No	300,000
144	FA8539-11-C-0007		Warner Robins AFB	Yes	Yes	Yes	Yes	No	309,846
145	FA8539-11-C-0010		Warner Robins AFB	No	Yes	Yes	Yes	No	250,000
146	FA8540-11-C-0010		Warner Robins AFB	No	Yes	No	Yes	No	3,122,375
147	FA8540-11-C-0020		Warner Robins AFB	No	Yes	Yes	Yes	No	4,732,156
148	FA8540-11-C-0026		Warner Robins AFB	Yes	Yes	Yes	Yes	No	3,402,921
149	FA8540-11-D-0002		Warner Robins AFB	No	Yes	Yes	Yes	No	345,000
150	FA8540-12-C-0002		Warner Robins AFB	Yes	Yes	Yes	No	No	150,486

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

Appendix C. Contract Compliance with Interim Rule Requirements

(Base Documentation Applies to Orders)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value
151	FA8519-11-C-0013		Warner Robins AFB	Yes	Yes	Yes	No	Yes	3,368,031
152	FA8501-11-C-0005		Warner Robins AFB	Yes	Yes	Yes	Yes	Yes	694,900
153	FA8501-11-C-0010		Warner Robins AFB	Yes	Yes	Yes	No	Yes	749,992
154	FA8522-10-D-0002	0002	Warner Robins AFB	Yes	Yes	Yes	Yes	No	749,590
155	FA9603-02-D-0101	0230	Warner Robins AFB	No	No	Yes	Yes	No	3,036,650
156	FA6643-11-D-0001	0030	Warner Robins AFB	Yes	Yes	Yes	Yes	Yes	5,322,911
	Warner Robins AFB Subtotal:			21	37	35	27	17	\$ 1,276,160,393
	Total of All Compliant Contracts:			117	131	114	133	114	
	Total of All Non-Compliant Contracts			39	25	42	23	42	
	Total CR Value of All Contracts Reviewed								\$ 10,461,985,642

AFB	Air Force Base
AFRL	Air Force Research Lab
CR	Cost Reimbursable

Department of the Air Force



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

21 FEB 2013

OFFICE OF THE ASSISTANT SECRETARY

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL
ATTN: PROGRAM DIRECTOR, ACQUISITION AND
CONTRACT MANAGEMENT

FROM: SAF/AQC
1060 Air Force Pentagon
Washington, DC 20330-1060

SUBJECT: DoDIG Audit, D2012-D000CG-0121.000, "Air Force Needs Better Processes to
Appropriately Justify and Manage Cost-Reimbursable Contracts"

Management comments in response to this audit are attached. If you have any questions
or concerns regarding our comments, please contact [REDACTED]

Wendy M. Masello
WENDY M. MASIELLO, Maj Gen, USAF
Deputy Assistant Secretary (Contracting)
Assistant Secretary (Acquisition)

Attachment:
Management Comments

DoD Office of Inspector General Audit D2012-D000CG-0121.000
“Air Force Needs Better Processes to Appropriately Justify and Manage Cost-Reimbursable Contracts”

Audit Results 1 – Emphasize FAR Revision for Use of Cost-Reimbursable Contracts

1.a. DAS(C) should emphasize the importance of the FAR revisions to contracting personnel for the use of cost reimbursable contracts.

DAS(C) Comments:

Concur with this recommendation. The DAS(C) will issue a memorandum to Air Force Contracting offices emphasizing the importance of FAR revisions identified in the report concerning cost-reimbursable contracts. This memorandum will be issued by 31 May 13.

Audit Results 2 – Consider Using Hybrid Contracts with Multiple CLIN Types

1.b. DAS(C) should consider issuing more hybrid contracts so that contract type can be selected on each task or delivery order.

DAS(C) Comments:

Concur with the intent of this recommendation. Contract type and CLIN structure is a function of acquisition planning and market research, which is performed jointly by all members of the acquisition team. Each solicitation and the resulting contract will contain the appropriate CLIN structure required to capture the unique needs of the instant acquisition. The DAS(C) will issue a memorandum to Air Force Contracting offices which will include a reminder to consider issuing hybrid indefinite delivery indefinite quantity (IDIQ) contracts to allow contract type to be selected at the task/delivery order level. This memorandum will be issued by 31 May 13.

Audit Results 3 – Identify Opportunities to Transition from Cost-Reimbursable Contracts

1.c. DAS(C) should establish better communication channels to identify opportunities to transition to firm-fixed-price contracts.

DAS(C) Comments:

Concur with the intent of this recommendation. Effective communication between team members is crucial for sound acquisition planning and throughout the acquisition life cycle. To facilitate better communication between acquisition teams, DAS(C) will include an element in the Air Force Other Contracting Acquisition Plan template which prompts discussion of opportunities to transition to firm-fixed price contracts; as a result, consideration for a transition will be discussed during the acquisition planning phase. This template is referenced and

hyperlinked in AFFARS 5307.105, Contents of Written Acquisition Plans. This information will be added to the template by 31 May 13.

Audit Results 4 – Document When Contracting Officers Retain COR Functions

1.d. DAS(C) should require contracting officers to document instances where the contracting officer maintained oversight functions on cost-reimbursable contracts.

DAS(C) Comments:

Concur with the intent of this finding. DAS(C) will issue a memo emphasizing that contracting officers must document within the contract file the decision to retain or delegate surveillance activities for cost reimbursable contracts. This memorandum will be issued by 31 May 13.

Defense Procurement and Acquisition Policy Comments



OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

FEB 28 2013

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

MEMORANDUM FOR PROGRAM DIRECTOR FOR ACQUISITION & CONTRACT
MANAGEMENT, OFFICE OF THE INSPECTOR GENERAL

THROUGH: DIRECTOR, ACQUISITION RESOURCES AND ANALYSIS

7/28/13

SUBJECT: Response to DoDOIG Draft Report on "Air Force Needs Better Processes to
Appropriately Justify and Manage Cost-Reimbursable Contracts" dated
February 7, 2013 (Project No. D2012-D000CG-0121.000)

As requested, I am providing responses to the general content and recommendation 3 of
the subject report.


Recommendation 3:

We recommend that the Director, Defense Procurement and Acquisition Policy, initiate a process
to eliminate the potential contradiction between Defense Federal Acquisition Regulation
Supplement 242.75 "Contractor Accounting Systems and Related Controls," and the interim
revisions for Federal Acquisition Regulation 7.105 "Contents of Written Acquisition Plans,"
16.104 "Factors in Selecting Contract Types," and 42.302 "Contract Administration Functions"
relating to contracting officers awarding cost reimbursable contracts to contractors when the
contracting officer determines the contractor's accounting system is inadequate.

Response:

Concur. DPAP intends to review if there are any potential contradictions between the Defense
Federal Acquisition Regulation Supplement (DFARS) 242.75 "Contractor Accounting Systems
and Related Controls," and the expanded Federal Acquisition Regulation (FAR) requirements.
Upon completion of the review appropriate actions will be taken, if required.

Please contact [REDACTED] if additional information is
required.

for 
Richard Ginman
Director, Defense Procurement
and Acquisition Policy

Warner Robins Air Force Sustainment Center Comments



DEPARTMENT OF THE AIR FORCE
AIR FORCE SUSTAINMENT CENTER (AFMC)
ROBINS AIR FORCE BASE GEORGIA


MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL
ATTN: PROGRAM DIRECTOR, ACQUISITION AND
CONTRACT MANAGEMENT

07 MAR 2013

FROM: AFSC/PK
460 Richard Ray Blvd, Suite 200
Robins ALC, GA 31098

SUBJECT: DoDIG Audit, D2012-D000CG-0121.000, "Air Force Needs Better Processes to
Appropriately Justify and Manage Cost-Reimbursable Contracts"

1. Management comments in response to this audit are attached.
2. If you have any questions or concerns regarding our comments, please contact [REDACTED]


ANTHONY J. BAUMANN, SES
Director of Contracting

Attachment:
Management Comments

cc: SAF/AQC

DoDIG Audit, D2012-D000CG-0121.000, "Air Force Needs Better Processes to Appropriately Justify and Manage Cost-Reimbursable Contracts"

Audit Results 2 – Adjust acquisition plan template

2. The Director, Warner Robins-Air Logistics Center/Contracting, adjust templates to require approval one level above the contracting officer for the use of cost-reimbursable contracts.

Director of Contracting Comments:

Concur with the intent of the recommendation. The draft audit identified the Price Negotiation Memorandum template in lieu of the Acquisition Plan template. The current template for the Air Force Streamlined Acquisition Strategy Summary (SASS) requires approval one level above the contracting office for the use of cost-reimbursable contracts. In the event a SASS is not required, the contracting officer will execute a Determinations and Findings (D&F) for cost-reimbursable contracts. The D&F will be approved one level above the contracting officer. This requirement will be emphasized during the next quarterly contracting officer training session. The training session will be held by 31 May 13.



Inspector General Department of Defense

